

Award No. 5818
Docket No. CL-5652

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: Claim of the Terminal Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that Carrier violated Agreements governing rates of pay and working conditions of employees represented by the Brotherhood:

1. When on December 16 and 17, 1950 Assistant Foreman, Clyde N. Van Meter was off sick and the Carrier refused to pay him sick leave pay.
2. When on December 20, 21 and 22, 1950 Assistant Foreman Herman Manning was off sick and the Carrier refused to pay him sick leave pay.
3. That Carrier now be directed to pay compensation due Messrs. Van Meter and Manning.

EMPLOYEES' STATEMENT OF FACTS: On December 16 and 17, 1950, Mr. Clyde Van Meter, Assistant Foreman, Group No. 1 employe, was off sick and when he returned to work on December 18, 1950, he ascertained that his crew was worked shorthanded on these dates, and therefore, he filed a request that he be allowed two days' sick leave pay under the rules, which was denied by the General Baggage Agent in letter dated January 9, 1951, attached as Employees' Exhibit "A", stating that his position as Assistant Foreman was filled on those dates and the Carrier had a number of extra mail handlers on duty on these dates.

On December 20, 21 and 22, 1950, Mr. Herman Manning, Assistant Foreman, Group No. 1 employe, was off sick and when he returned to work on December 23, 1950, and ascertained that his crew was worked shorthanded on these dates, then requested that he be allowed three days' sick leave pay under the rules, which was denied by the General Baggage Agent in letter dated January 9, 1951, attached as Employees' Exhibit "B", with exactly the same reply given to Mr. Van Meter.

Under date of January 10, 1951, Mr. Manning submitted his claim to Local Chairman Ferguson to progress, as per copy of his statement, in which he states crew was worked shorthanded, attached as Employees' Exhibit "C".

All data submitted in support of Carrier's position has been presented to the duly authorized representative of the Employees and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The record in this case indicates that the Petitioner and the respondent Carrier are in substantial agreement with respect to the facts except on the matter of cost. The primary disagreement has to do with the proper application of Rule 51 to the facts. The Carrier justifies its action in denying sick leave pay to Claimants by stating that the first test set forth in Rule 51 was not met under the facts. This part of the Rule reads, "Where the work of an employe is kept up by other employes without cost to the Carrier . . ." The Carrier agrees that additional cost was involved as a result of the absence of Claimants on the dates in question. It is pointed out that the absence dates were during the rush period of December, 1950, when it was necessary for the Carrier to employ quite a few extra employes.

The Petitioner counters this claim with the assertion that extra employes were hired by the Carrier prior to the illness dates and were already on duty when Claimants became ill. It is argued that on each of the dates of Claimants' illnesses a mail handler's job was not filled, thus enabling the Carrier to operate with a lower payroll cost than would have been the case had Claimants not been absent.

It is clear from the record that additional workers were not hired to replace Claimants on the days involved. Instead their respective positions as Assistant Foremen were filled by mail handlers, whose positions, in turn, were kept vacant. No effective showing is made by the Carrier that there was additional cost to the Carrier as a result of these absences; that the cost would have been any less had Claimants not been absent. Under the facts here present it is appropriate that the claim be sustained. Awards 4517, 1511, 2422.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 24th day of June, 1952.